

AMENDED IN SENATE MAY 1, 2000  
AMENDED IN SENATE APRIL 24, 2000

**SENATE BILL**

**No. 2168**

**Introduced by Senator Polanco**

February 25, 2000

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~~An act to amend Sections 104, 12340.1, 12340.3, and 12340.5 of, to add Section 12340.12 to, and to add Article 8 (commencing with Section 12418) to Chapter 1 of Part 6 of Division 2 of, the Insurance Code, relating to title insurance.~~

*An act to amend Section 10177.4 of the Business and Professions Code, to add Section 1103.15 to the Civil Code, and to amend Section 12404 of the Insurance Code, relating to kickbacks.*

LEGISLATIVE COUNSEL'S DIGEST

SB 2168, as amended, Polanco. ~~Title insurance: title insurers: Title Insurance Guarantee Fund~~ *Natural hazard disclosure statements: kickbacks.*

*Existing law requires the disclosure of natural hazards upon transfer of residential property, as specified, and provides for the preparation of natural hazard disclosure statements in that regard.*

*This bill would prohibit any person who generates, for marketing and sale, natural hazard disclosure statements pursuant to these provisions from providing any commission, fee, consideration, compensation, or inducement to the property transferor's listing or selling agent in exchange for the referral of customers.*

*Existing law provides for the licensing and regulation of real estate agents and brokers by the Real Estate Commissioner, and authorizes the commissioner to suspend or revoke the license of a licensee who claims, demands, or receives a commission, fee, or other consideration as compensation or inducement for referral of customers to escrow agents, structural pest control firms, title insurers, and various other parties.*

*This bill would also authorize the commissioner to suspend or revoke the license of a licensee with respect to similar referrals of customers to persons who generate natural hazard disclosure statements for marketing or sale.*

*Existing law provides for the licensing and regulation of title insurers by the Insurance Commissioner, and defines “title insurance” for these purposes. Existing law prohibits a title insurer, underwritten title company, or controlled escrow company from paying any commission, compensation, or other consideration to any person as an inducement for the placement or referral of title business, as defined. A willful violation of these provisions is a crime.*

*This bill would expand the definition of “title insurance” to include insuring, guaranteeing, or indemnifying owners of property and others against loss or damage from incorrectness of searches and disclosure of publicly reported hazardous conditions—business” for these purposes to include the offering of endorsements, indemnities, or guarantees filed with the Department of Insurance, thereby expanding the definition of a crime.*

*This bill would also create the Title Insurance Guarantee Account within the Insurance Fund, funded by unspecified assessments on title insurers, underwritten title companies, and controlled escrow companies. Moneys in the account would be used by the Insurance Commissioner for the security and protection of the holders and beneficiaries of title insurance policies, and to make up shortages in subescrow or escrow accounts, as specified. Because a violation of this requirement would be a crime, this bill would impose a state-mandated local program by expanding the definition of an existing crime.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

~~SECTION 1. Section 104 of the Insurance Code is~~

*SECTION 1. Section 10177.4 of the Business and Professions Code is amended to read:*

10177.4. (a) Notwithstanding any other provision of law, the commissioner may, after hearing in accordance with this part relating to hearings, suspend or revoke the license of a real estate licensee who claims, demands, or receives a commission, fee, or other consideration, as compensation or inducement, for referral of customers to any person who generates, for marketing and sale, natural hazard disclosure statements, as described in Section 1103.2 of the Civil Code, escrow agent, structural pest control firm, home protection company, title insurer, controlled escrow company, or underwritten title company. A licensee may not be disciplined under any provision of this part for reporting to the commissioner violations of this section by another licensee, unless the licensee making the report had guilty knowledge of, or committed or participated in, the violation of this section.

(b) The term “other consideration” as used in this section does not include any of the following:

(1) Bona fide payments for goods or facilities actually furnished by a licensee or for services actually performed by a licensee, provided these payments are reasonably related to the value of the goods, facilities, or services furnished.

(2) Furnishing of documents, services, information, advertising, educational materials, or items of a like nature that are customary in the real estate business and

1 that relate to the product or services of the furnisher and  
2 that are available on a similar and essentially equal basis  
3 to all customers or the agents of the customers of the  
4 furnisher.

5 (3) Moderate expenses for food, meals, beverages, and  
6 similar items furnished to individual licensees or groups  
7 or associations of licensees within a context of customary  
8 business, educational, or promotional practices  
9 pertaining to the business of the furnisher.

10 (4) Items of a character and magnitude similar to those  
11 in paragraphs (2) and (3) that are promotional of the  
12 furnisher's business customary in the real estate business,  
13 and available on a similar and essentially equal basis to all  
14 customers, or the agents of the customers, of the  
15 furnisher.

16 (c) Nothing in this section shall relieve any licensee of  
17 the obligation of disclosure otherwise required by this  
18 part.

19 *SEC. 2. Section 1103.15 is added to the Civil Code, to*  
20 *read:*

21 *1103.15. Any person who generates, for marketing*  
22 *and sale, natural hazard disclosure statements pursuant to*  
23 *this article shall not provide any commission, fee,*  
24 *consideration, compensation, or inducement to the*  
25 *transferor's listing or selling agent, as defined in Section*  
26 *1103.14, in exchange for the referral of customers.*

27 *SEC. 3. Section 12404 of the Insurance Code is*  
28 *amended to read:*

29 12404. (a) It is unlawful for any title insurer,  
30 underwritten title company or controlled escrow  
31 company to pay, directly or indirectly, any commission,  
32 compensation, or other consideration to any person as an  
33 inducement for the placement or referral of title business.  
34 Actual placement or referral of title business is not a  
35 precondition to a violation of this section, whether the  
36 violation is or is not a per se violation pursuant to  
37 subdivision (c).

38 (b) For purposes of this section, the following  
39 definitions are applicable:



(1) “Person” means any individual or entity who is any owner or prospective owner, lessee or prospective lessee of real property or any interest therein, any obligee or prospective obligee of an obligation secured or to be secured either in whole or in part by real property or any interest therein, or any person who is acting or who is in the business of acting as agent, representative, attorney, or employee of those persons.

(2) “Title business” means the “business of title insurance” as defined in Section 12340.3, and includes, but is not limited to, the offering of title insurance, escrow *services, other title endorsements, indemnities, or guarantees filed with the department*, or other services by a title insurer, underwritten title company, or controlled escrow company.

(3) “Compensating balance” is a balance maintained in a lending institution by any title insurer, underwritten title company, or controlled escrow company for the express or implied purpose of influencing the extension of credit to a third party or the provision of goods, services or benefits to a third party as an inducement for the placement or referral of title business by a third party.

(c) The following activities, whether performed directly or indirectly, are deemed per se inducements for the placement or referral of title insurance business by any person and are unlawful:

(1) Paying or offering to pay, furnishing or offering to furnish, or providing or offering to provide assistance with the business expenses of any person, including, but not limited to, rent, employee salaries, furniture, copiers, facsimile machines, automobiles, telephone services or equipment, or computers.

(2) Providing or offering to provide any form of consideration intended for the benefit of any person, including cash, below market rate loans, automobile charges, or merchandise or merchandise credits.

(3) Placing or offering to place on behalf of any person, compensating balances.

(4) Advancing or paying or offering to advance or pay money on behalf of any person into an escrow to facilitate

1 the closing thereof, other than any sum which represents  
2 the proceeds of a loan made in the ordinary course of  
3 business and in compliance with Section 1176; or an  
4 advance not to exceed 2 percent of the sales price of the  
5 real property being sold or exchanged through the  
6 escrow or the amount of any loan secured by real  
7 property involved in the escrow, whichever is greater; or  
8 the extension of credit or an advance for the costs, fees  
9 and expenses of the escrow or of the title insurance issued  
10 or to be issued in connection therewith.

11 (5) Disbursing or offering to disburse on behalf of any  
12 person escrow funds held by a title insurer, underwritten  
13 title company or controlled escrow company before the  
14 conditions of the escrow applicable to that disbursement  
15 have been met, or in a manner which does not conform  
16 to Section 12413.1, including disbursing or offering to  
17 disburse before the expiration of the appropriate period  
18 established in Section 12413.1.

19 (6) Furnishing or offering to furnish all or any part of  
20 the time or productive effort of any employee of the title  
21 insurer, underwritten title company, or controlled  
22 escrow company to any person for any service unrelated  
23 to the title business.

24 (d) Reasonable expenditures for food, beverages,  
25 entertainment, educational programs, and promotional  
26 items constituting ordinary business expenses are  
27 deemed not to constitute an inducement for the  
28 placement or referral of title business, if the expenditures  
29 are correctly reported and properly substantiated as an  
30 ordinary and necessary business expense under  
31 provisions of the Internal Revenue Code and regulations  
32 issued thereunder, and the expenditures do not violate  
33 any other section of law, including, but not limited to,  
34 Section 10177.4 of the Business and Professions Code.

35 (e) The provision or payment of any form of  
36 consideration as an inducement for the placement or  
37 referral of title business not specifically set forth in this  
38 section shall not be presumed lawful merely because they  
39 are not specifically prohibited.



(f) The Insurance Commissioner may determine compliance and enforce the provisions of this section by written order, regulation or written consent which may take into consideration standards, conditions, guidelines, principles, or definitions utilized by other states or federal agencies but those standards, conditions, guidelines, principles, or definitions shall not be determinative.

(g) It is the intent of the Legislature that the enactment of this section shall have no effect on the applicability of other sections of the Insurance Code that are in existence prior to the enactment of this section and which specifically, or by implication, refer to this section. The Legislature hereby intends that this section, including the specific terms employed within it, shall be liberally construed for the purpose of protecting consumers of title business.

*SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

~~amended to read:~~

~~104. Title insurance means insuring, guaranteeing or indemnifying owners of real or personal property or the holders of liens or encumbrances thereon or others interested therein against loss or damage suffered by reason of any of the following:~~

~~(a) Liens or encumbrances on, or defects in the title to, that property.~~

~~(b) Invalidity or unenforceability of any liens or encumbrances thereon.~~

~~(c) Incorrectness of searches relating to the title to that property.~~

~~(d) Incorrectness of searches and disclosure of publicly reported hazardous conditions.~~

1   ~~SEC. 2. Section 12340.1 of the Insurance Code is~~  
2 ~~amended to read:~~

3   ~~12340.1. “Title insurance” means insuring,~~  
4 ~~guaranteeing or indemnifying owners of real or personal~~  
5 ~~property or the holders of liens or encumbrances thereon~~  
6 ~~or others interested therein against loss or damage~~  
7 ~~suffered by reason of any of the following:~~

8   ~~(a) Liens or encumbrances on, or defects in the title to,~~  
9 ~~that property.~~

10   ~~(b) Invalidity or unenforceability of any liens or~~  
11 ~~encumbrances thereon.~~

12   ~~(c) Incorrectness of searches relating to the title to~~  
13 ~~that property.~~

14   ~~(d) Incorrectness of searches and disclosure of~~  
15 ~~publicly reported hazardous conditions.~~

16   ~~SEC. 3. Section 12340.3 of the Insurance Code is~~  
17 ~~amended to read:~~

18   ~~12340.3. “Business of title insurance” includes any of~~  
19 ~~the following:~~

20   ~~(a) Issuing or proposing to issue any title policy as~~  
21 ~~insurer, guarantor, or indemnitor.~~

22   ~~(b) Transacting or proposing to transact any phase of~~  
23 ~~title insurance, including solicitation, negotiation~~  
24 ~~preliminary to execution, or execution of a title policy;~~  
25 ~~insuring and transacting matters subsequent to the~~  
26 ~~execution of a title policy and arising out of the policy;~~  
27 ~~excluding reinsurance.~~

28   ~~(c) The performance by a title insurer, an~~  
29 ~~underwritten title company, or a controlled escrow~~  
30 ~~company of any service in conjunction with the issuance~~  
31 ~~or contemplated issuance of a title policy, including but~~  
32 ~~not limited to, the handling of any escrow, settlement, or~~  
33 ~~closing in connection therewith; or the doing of or~~  
34 ~~proposing to do any business that is in substance the~~  
35 ~~equivalent of any of the activities described in this~~  
36 ~~subdivision or in subdivision (a) or (b).~~

37   ~~(d) The issuance, by a title insurer, of a letter of~~  
38 ~~indemnity. The letter of indemnity shall be limited to and~~  
39 ~~issued solely for the purpose of indemnifying the~~  
40 ~~commissioner on behalf of any member of the public who~~



1 ~~transacts an escrow with an underwritten title company,~~  
2 ~~with whom the title insurer has an underwriting~~  
3 ~~agreement. A title insurer may charge a reasonable fee in~~  
4 ~~connection with the issuance of the letter of indemnity.~~  
5 ~~No rate or form filing shall be required with respect to the~~  
6 ~~letter of indemnity.~~

7 ~~(e) The act of an insurer in furnishing in writing to a~~  
8 ~~prospective purchaser of the insurer's title policy a~~  
9 ~~statement that assures, and assumes the liability for, the~~  
10 ~~proper performance of services necessary to the conduct~~  
11 ~~of a real estate closing performed by an underwritten title~~  
12 ~~company with whom the insurer maintains an~~  
13 ~~underwriting agreement. A title insurer may charge a~~  
14 ~~reasonable fee in connection with the furnishing of the~~  
15 ~~statement. No rate or form filing shall be required with~~  
16 ~~respect to the statement.~~

17 ~~(f) Preparing publicly disclosed hazard searches and~~  
18 ~~acting as a disclosure agent as authorized by law.~~

19 ~~SEC. 4. Section 12340.5 of the Insurance Code is~~  
20 ~~amended to read:~~

21 ~~12340.5. "Underwritten title company" means any~~  
22 ~~corporation engaged in the business of preparing title~~  
23 ~~searches, publicly disclosed hazard searches, title~~  
24 ~~examinations, title reports, certificates or abstracts of title~~  
25 ~~upon the basis of which a title insurer writes title policies.~~

26 ~~SEC. 5. Section 12340.12 is added to the Insurance~~  
27 ~~Code, to read:~~

28 ~~12340.12. "Publicly disclosed hazards" means those~~  
29 ~~hazards that are required to be disclosed pursuant to~~  
30 ~~subdivision (e) of Section 1103 of the Civil Code.~~

31 ~~SEC. 6. Article 8 (commencing with Section 12418) is~~  
32 ~~added to Chapter 1 of Part 6 of Division 2 of the Insurance~~  
33 ~~Code, to read:~~

34  
35 **Article 8. Title Insurance Guarantee Account**  
36

37 ~~12418. The purpose of this article is to protect~~  
38 ~~consumers and the title industry from the adverse effects~~  
39 ~~of the impairment or insolvency of a title insurer;~~

~~1 underwritten title company, or controlled escrow  
2 company.~~

~~3 12418.3. (a) There is created within the Insurance  
4 Fund the Title Insurance Guarantee Account.~~

~~5 (b) All moneys deposited in the fund shall be available,  
6 upon appropriation by the Legislature, for expenditure  
7 by the commissioner immediately upon issuance of a  
8 court order as provided in Section 1011, or upon the  
9 institution of an action pursuant to Section 1013, against  
10 a title insurer, underwritten title company, or controlled  
11 escrow company.~~

~~12 (c) Moneys in the fund shall be used for the security  
13 and protection of the holders of, or beneficiaries under,  
14 title policies, and to make up shortages in subescrow or  
15 escrow accounts.~~

~~16 12418.5. (a) Contributions to the Title Insurance  
17 Guarantee Account in the form of assessments shall be  
18 made by all title insurers, underwritten title companies,  
19 and controlled escrow companies authorized to transact  
20 the business of title insurance in this state. Except as  
21 provided in subdivision (b), the total amount of  
22 assessments shall not exceed \_\_\_\_\_ dollars  
23 (\$\_\_\_\_\_) annually. The Commissioner shall  
24 annually assess each title insurer, underwritten title  
25 company, and controlled escrow company a pro rata  
26 share of that amount. Each title insurer's, underwritten  
27 title company's, and controlled escrow company's pro  
28 rata share shall be calculated by dividing each entity's  
29 respective adjusted title and escrow incomes derived  
30 from their title insurance business conducted in this state  
31 by the total amount applicable to all those entities, for the  
32 year preceeding the date of the assessment. All moneys  
33 from the assessment received by the department shall be  
34 deposited into the Title Insurance Guarantee Account.~~

~~35 (b) To the extent that moneys in the Title Insurance  
36 Guarantee Account are not sufficient to protect the  
37 holders of, or beneficiaries under, title policies, or to make  
38 up shortages in subescrow or escrow accounts, the  
39 commissioner shall assess each title insurer, underwritten~~

1 ~~title company, and controlled escrow company a pro rata~~  
2 ~~share of that deficiency.~~

3 ~~(e) For the purposes of this section, “adjusted title and~~  
4 ~~escrow income” means the following:~~

5 ~~(1) With respect to a title insurer, all title insurance~~  
6 ~~premiums for policies, guarantees, and endorsements~~  
7 ~~issued in this state less any portion thereof retained by~~  
8 ~~underwritten title companies, plus all escrow fees with~~  
9 ~~respect to escrows conducted in this state.~~

10 ~~(2) With respect to an underwritten title company or~~  
11 ~~a controlled escrow company, all title insurance~~  
12 ~~premiums for policies, guarantees, and endorsements~~  
13 ~~issued in this state less any portion thereof due to a title~~  
14 ~~insurer, plus all escrow fees with respect to escrows~~  
15 ~~conducted in this state.~~

16 ~~SEC. 7. No reimbursement is required by this act~~  
17 ~~pursuant to Section 6 of Article XIII B of the California~~  
18 ~~Constitution because the only costs that may be incurred~~  
19 ~~by a local agency or school district will be incurred~~  
20 ~~because this act creates a new crime or infraction,~~  
21 ~~eliminates a crime or infraction, or changes the penalty~~  
22 ~~for a crime or infraction, within the meaning of Section~~  
23 ~~17556 of the Government Code, or changes the definition~~  
24 ~~of a crime within the meaning of Section 6 of Article~~  
25 ~~XIII B of the California Constitution.~~